

WISCONSIN STATE
LEGISLATURE
COMMITTEE HEARING
RECORDS

2005-06

(session year)

Assembly

(Assembly, Senate or Joint)

Committee on
Insurance
(AC-In)

(Form Updated: 11/20/2008)

COMMITTEE NOTICES ...

➤ Committee Reports ... CR

**

➤ Executive Sessions ... ES

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**INFORMATION COLLECTED BY COMMITTEE
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Name:

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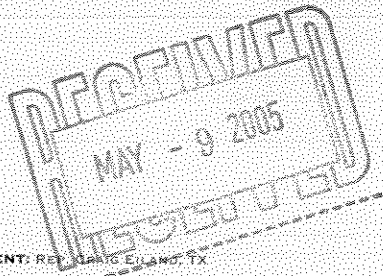
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➤ Miscellaneous ... Misc

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(misc. to/from correspondence)



Comments:
What do you want to go
Do w/ this Adm

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May 2, 2005

Packet

Representative Ann Nischke
Assembly Committee on Insurance, Rep. Ann Nischke, Chairman
State Capitol, Room 113 West
P.O. Box 8952
Madison, WI 53708

RE: State Insurance Modernization

ROUTING	<input type="checkbox"/>	
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Dear Representative Nischke:

The National Conference of Insurance Legislators (NCOIL) believes that states are best suited to bring about needed insurance regulatory reform, though **federal initiatives are threatening to preempt state law, undermine state authority, and curtail state insurance premium tax dollars.** NCOIL cannot support any federal legislation, including an optional federal charter or the State Modernization and Regulatory Transparency (SMART) Act, that would encroach upon states' authority to develop sound insurance public policy.

In an increasingly global and competitive market, to achieve needed reform states should address four key areas: speed-to-market for insurance products, rate modernization, uniform producer and company licensing, and market conduct reform.

NCOIL has developed and/or endorsed model legislation in these important areas to improve the current system. Attached is NCOIL's *State Legislative Tools for Insurance Modernization*, which provides NCOIL's recommended approaches to achieving needed reform. The tools include:

- a joint NCOIL-NAIC **Market Conduct Surveillance Model Law** that would create a framework to assess, prioritize and remedy market conduct problems and procedures to communicate and coordinate market conduct actions among the states
- an NCOIL **Property-Casualty Insurance Modernization Act** that would establish a no-file system for commercial lines, a use-and-file system for personal lines, and an exemption from rate and form regulatory requirements for large commercial insurance buyers
- an NCOIL **Property-Casualty Flex-Rating Regulatory Improvement Act** that would serve as an interim approach to enactment of an open competition-based system
- an NCOIL **Company Licensing Modernization Model** that would promote consistency in the states by use of common licensing requirements, forms, and procedures

- an NAIC *Interstate Insurance Product Regulation Compact* that would provide speed-to-market for life, annuity and disability insurance products

State legislators have taken and will continue to take a leadership role in creating a more uniform, effective, and efficient state-based regulatory system that fosters innovation and a competitive insurance marketplace. To date, the states have made great strides enacting uniform laws in these areas, specifically:

- Forty-nine states have adopted reciprocal producer licensing laws, 41 of which are GLBA-compliant
- Over 24 states have enacted property-casualty rate deregulation legislation
- Eleven states have enacted and 17 states are considering insurance product approval laws
- Three states have introduced market conduct reform regulation in 2005, based on the NCOIL market conduct model act adopted as a joint NCOIL-NAIC model in December 2004

The next few years may well determine the course of insurance regulation and its impact on our authority as state legislators. Your state's enactment of these model laws will aid state efforts to achieve insurance modernization, which are well-underway, and will stave off any federal effort to preempt state law, undermine state authority, and jeopardize state insurance premium tax dollars.

NCOIL is an organization of state legislators focused on insurance legislation and regulation. Many legislators active in NCOIL either chair or are members of the committees responsible for insurance regulation in respective state houses across the country.

For more information, please contact the NCOIL National Office at 518-678-0178.

Sincerely yours,



Texas Representative Craig Eiland
NCOIL President

Attachments

k:/ncoi/2005/2004734a.doc

**STATE LEGISLATIVE TOOLS
FOR
INSURANCE
MODERNIZATION**

MAY 2005



National Conference of Insurance Legislators (NCOIL)

**385 Jordan Road
Troy, NY 12180
(518) 687-0178
www.ncoil.org**

**STATE LEGISLATIVE TOOLS FOR
INSURANCE MODERNIZATION**

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STATE LEGISLATIVE TOOLS FOR INSURANCE MODERNIZATION

Overview

The NCOIL *State Legislative Tools for Insurance Modernization* is designed to give states the instruments they need to reform insurance oversight. Insurance reform is critical for several reasons.

Modernization will **promote competition** within the insurance market, **increase capacity**, and foster an environment wherein consumers will enjoy **lower premiums** and more coverage options.

State-by-state reform of insurance regulation will demonstrate that **initiatives for federal insurance oversight are entirely unnecessary**—that the states themselves have responded to the challenges of an increasingly global insurance market and are the best caretakers of their local insurance systems. NCOIL's letter to Congress in the following appendix represents one of many NCOIL efforts to reaffirm the states' unique ability to oversee insurance matters.

State legislatures—working with state governors and attorneys general—can forestall federal efforts to preempt state law, to undermine state authority, and to curtail state insurance premium tax dollars by enacting effective reforms to state insurance laws.

Reform of **market conduct** surveillance systems; **rate modernization** for property-casualty insurance coverage; streamlined **company licensing** requirements; and the interstate **compact** for life, disability, annuity, and long-term care insurance products will help states ensure more vibrant, healthy insurance markets that benefit consumers and insurers alike. Many states have already worked to achieve these ends.

NCOIL strongly encourages state legislatures to take the lead in these key areas in order to preserve their regulation of insurance.

States are positioned best to bring about needed insurance regulatory reform. We have a long history of protecting consumers in the insurance marketplace, resulting in a far lower rate of scandal and consumer abuse than any other sector of the financial services industry, despite the fact that many states regulate a domestic insurance industry that dwarfs that of some developed countries. This is not a coincidence—insurance regulation closest to the consumer is best for the consumer.



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NATIONAL CONFERENCE OF INSURANCE LEGISLATORS MARKET CONDUCT SURVEILLANCE MODEL LAW

Adopted unanimously by the NCOIL Executive Committee on February 27, 2004, and amended on July 16, 2004. Adopted by the National Association of Insurance Commissioners (NAIC) on September 12, 2004.

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Section 1. Short Title

This Act shall be known and may be cited as the *Market Conduct Surveillance Law*.

Section 2. Purpose/Legislative Intent

The purpose of this act is to establish a framework for Insurance Department market conduct actions, including:

- Processes and systems for identifying, assessing and prioritizing market conduct problems that have a substantial adverse impact on consumers, policyholders and claimants;

- Market conduct actions by a commissioner to substantiate such market conduct problems and a means to remedy significant market conduct problems; and
- Procedures to communicate and coordinate market conduct actions among states to foster the most efficient and effective use of resources.

Section 3. Definitions

- (a) “Commissioner” means the chief insurance regulatory official of the state.

Drafting note: Where the word “commissioner” appears in the Model Act, the appropriate designation for the chief insurance regulatory official of the state, if different, should be substituted.

- (b) “Complaint” means a written or documented oral communication primarily expressing a grievance, meaning an expression of dissatisfaction.
- (c) “Market Conduct Action” means any of the full range of activities that the Commissioner may initiate to assess and address the market practices of insurers, beginning with market analysis and extending to targeted examinations. The Commissioner’s activities to resolve an individual consumer complaint or other report of a specific instance of misconduct are not market conduct actions for purposes of this act.
- (d) “Market Analysis” means a process whereby market conduct surveillance personnel collect and analyze information from filed schedules, surveys, required reports and other sources in order to develop a baseline understanding of the marketplace and to identify patterns or practices of insurers that deviate significantly from the norm or that may pose a potential risk to the insurance consumer.
- (e) “Market Conduct Surveillance Personnel” means those individuals employed or contracted by the Commissioner to collect, analyze, review or act on information on the insurance marketplace which identifies patterns or practices of insurers
- (f) “National Association of Insurance Commissioners” (NAIC) means the organization of insurance regulators from the 50 states, the District of Columbia and the four U.S. territories.

Drafting Note: If statutory drafting conventions require further description, the following language should be used: “Its mission is to assist insurance regulators in protecting the public interest, promoting competitive markets, facilitating the fair and equitable treatment of insurance consumers, promoting the reliability, solvency and financial solidity of insurance institutions, and supporting and improving state regulation of insurance.”

- (1) “NAIC Market Analysis Handbook” means the outline of the elements and objectives of market analysis developed and adopted by the NAIC, and the process by which states can establish and implement market analysis programs.

- (2) "NAIC Market Conduct Examiner's Handbook" means the set of guidelines developed and adopted by the NAIC, which documents established practices to be used by market conduct surveillance personnel in developing and executing an examination.
 - (3) "NAIC Market Conduct Uniform Examination Procedures" means the set of guidelines developed and adopted by the NAIC designed to be used by market conduct surveillance personnel in conducting an examination.
 - (4) "NAIC Standard Data Request" means the set of field names and descriptions developed and adopted by the NAIC for use by market conduct surveillance personnel in an examination.
- (g) "Qualified Contract Examiner" means a person under contract to the Commissioner, who is qualified by education, experience and, where applicable, professional designations, to perform market conduct actions.
- (h) "Targeted Examination" means a focused exam, based on the results of market analysis indicating the need to review either a specific line of business or specific business practices, including but not limited to underwriting and rating, marketing and sales, complaint handling operations/management, advertising materials, licensing, policyholder services, non-forfeitures, claims handling, or policy forms and filings. A targeted examination may be conducted by desk examination or by an on-site examination.
- (1) "Desk Examination" means a targeted examination that is conducted by an examiner at a location other than the insurer's premises. A desk examination is usually performed at the Insurance Department's offices with the insurer providing requested documents by hard copy, microfiche, discs or other electronic media, for review.
 - (2) "On-site Examination" means a targeted examination conducted at the insurer's home office or the location where the records under review are stored.
- (i) "Third Party Model or Product" means a model or product provided by an entity separate from and not under direct or indirect corporate control of the insurer using the model or product.

Section 4. Market Analysis Procedures

- (a) (1) The Commissioner shall gather information from data currently available to the Insurance Department, as well as surveys and required reporting requirements, information collected by the NAIC and a variety of other sources in both the public and private sectors, and information from within and outside the insurance industry.
- (2) Such information shall be analyzed in order to develop a baseline understanding of the marketplace and to identify for further review insurers or practices that deviate significantly from the norm or that may pose a potential risk to the insurance consumer. The Commissioner shall use the NAIC Market Analysis Handbook as one resource in performing this analysis [Additional language will be necessary to conform with the option chosen in § 5(d) which addresses changes to NAIC work products.]
- (b) If the Commissioner determines, as a result of market analysis, that further inquiry into a particular insurer or practice is needed, the following continuum of market conduct actions may be

considered prior to conducting a targeted, on-site market conduct examination. The action selected shall be made known to the insurer in writing if the action involves insurer participation or response. These actions may include, but are not limited to:

- (1) Correspondence with Insurer
- (2) Insurer Interviews
- (3) Information Gathering
- (4) Policy and Procedure Reviews
- (5) Interrogatories
- (6) Review of Insurer Self-Evaluation (if not subject to a privilege of confidentiality) and compliance programs, including membership in a best-practice organization

Drafting note: A best practice organization has as its central mission the promotion of high ethical standards in the marketplace.

- (7) Desk Examinations

The Commissioner shall select a market conduct action that is cost effective for the Insurance Department and the insurer, while still protecting the insurance consumer.

- (c) The Commissioner shall take those steps reasonably necessary to eliminate duplicative inquiries and coordinate market conduct actions and findings with other states.

Section 5. Protocols for Market Conduct Actions

- (a) Market conduct actions taken as a result of a market analysis shall focus on the general business practices and compliance activities of insurers, rather than identifying infrequent or unintentional random errors that do not cause significant consumer harm.
- (b) (1) The Commissioner is authorized to determine the frequency and timing of such market conduct actions. The timing shall depend upon the specific market conduct action to be initiated, unless extraordinary circumstances indicating a risk to consumers require immediate action.

(2) If the Commissioner has information that more than one insurer is engaged in common practices that may violate statute or regulations, he/she may schedule and coordinate multiple examinations simultaneously.
- (c) The insurer may be given an opportunity to resolve matters that arise as a result of a market analysis to the satisfaction of the Commissioner before any additional market conduct actions are taken against the insurer.
- (d) For any change made to an NAIC work product referenced in this Act **[states shall select one of the following three provisions]:**

[1] which materially changes the way in which market conduct actions are conducted, the Commissioner shall give notice and provide parties with an opportunity for a public hearing pursuant to (cite appropriate state administrative procedures act). If no hearing is held, the Commissioner shall use the versions of such work products most recently developed and adopted by the NAIC.]

[2] which materially changes the way in which market conduct actions are conducted, the Commissioner shall give notice and provide parties with an opportunity for a public hearing pursuant to (cite appropriate state administrative procedures act). If a hearing is requested and not held, the Commissioner shall use the versions of such work products most recently developed and adopted by the NAIC. For the purpose of this subsection, "material change" means any change that would require a statutory or rule change.]

[3] which changes the way in which market conduct actions are conducted, the Commissioner shall give notice and provide parties with an opportunity for a public hearing pursuant to (cite appropriate state administrative procedures act) in the following circumstances:

A) Any change that would necessitate a change in statute, regulation or rule, or

B) If a Commissioner deviates from the most recently adopted NAIC work product.]

- (e) Except as otherwise provided by law, every company or person from whom information is sought, its officers, directors and agents shall provide the Commissioner convenient and free access to all books, records, accounts, papers, documents and any or all computer or other recordings relating to the property, assets, business and affairs of the company. The officers, directors, employees, insurance producers and agents of the company or person must facilitate market conduct actions and aid in market conduct actions so far as it is in their power to do so.

Section 6. Targeted On-Site Market Conduct Examinations

- (a) When the commissioner determines that other market conduct actions identified in section 4(b) are not appropriate, the Commissioner has the discretion to conduct targeted, on-site market conduct examinations in accordance with the NAIC Market Conduct Uniform Examination Procedures and the Market Conduct Examiners Handbook [Additional language will be necessary to conform with the option chosen in § 5(d) which addresses changes to NAIC work products.]
- (b) Concomitant with the notification requirements established in subsection (e) of this section, the commissioner shall post notification on the NAIC *Examination Tracking System*, or successor NAIC product as determined by the Commissioner, that a market conduct examination has been scheduled.
- (c) In lieu of an examination of a foreign or alien insurer licensed in this state under this Act, the commissioner may accept an examination report of another state provided the state has a market surveillance system the commissioner deems comparable to the market surveillance system set forth in this law.

Drafting note: It is anticipated that as states adopt this NCOIL model law, or similar statutes, the practice of domestic deference and other appropriate forms of interstate collaboration, whereby states rely on market conduct examinations performed by other states, will reduce and eventually eliminate unnecessary duplication of effort in the area of market conduct regulation.

- (d) (1) Prior to commencement of a targeted on-site market conduct examination, market conduct surveillance personnel shall prepare a work plan consisting of the following:

(A) The name and address of the insurer(s) being examined;

- (B) The name and contact information of the examiner-in-charge;
 - (C) The justification(s) for the targeted, on-site examination;
 - (D) The scope of the targeted, on-site examination;
 - (E) The date the on-site examination is scheduled to begin;
 - (F) Notice of any non-insurance department personnel who will assist in the examination;
 - (G) A time estimate for the targeted, on-site examination;
 - (H) A budget for the targeted, on-site examination if the cost of the examination is billed to company; and
 - (I) An identification of factors that will be included in the billing if the cost of the examination is billed to company.
- (2) Market conduct examinations shall, to the extent feasible, utilize desk examinations and data requests prior to a targeted on-site examination.
- (3) Market conduct examinations shall be conducted in accordance with the provisions set forth in the NAIC Market Conduct Examiners Handbook and the NAIC Market Conduct Uniform Examinations Procedures [Additional language will be necessary to conform with the option chosen in § 5(d) which addresses changes to NAIC work products.]
- (4) The department shall use the NAIC Standard Data Request (or successor product, adopted by regulation, that is substantially similar to the foregoing NAIC product).
- (e) Announcement of the examination shall be sent to the insurer and posted on the NAIC's *Examination Tracking System* (or successor NAIC product, as determined by the commissioner) as soon as possible but in no case later than 60 days before the estimated commencement of the on-site examination, except where the exam is conducted in response to extraordinary circumstances as described in subsection 5(b)(1). Such announcement sent to the insurer shall contain the examination work plan and a request for the insurer to name its examination coordinator.
- (f) The Commissioner shall conduct a pre-examination conference with the insurer examination coordinator and key personnel to clarify expectations thirty (30) days prior to commencement of the examination.
- (g) Prior to the conclusion of a targeted on-site market conduct examination, the individual among the market conduct surveillance personnel who is designated as the examiner-in-charge shall schedule an exit conference with the insurer.
- (h) (1) The commissioner shall adhere to the following timeline, unless a mutual agreement is reached with the insurer to modify the timeline:

(A) The Commissioner shall deliver the draft report to the insurer within 60 days of the completion of the examination. Completion of the examination shall be defined as the date the Commissioner confirms in writing that the examination is completed.

(B) The insurer must respond with written comments within 30 days of receipt of the draft report.

(C) The department shall make a good faith effort to resolve issues informally and prepare a final report within 30 days of receipt of the insurer's written comments, unless a mutual agreement is reached to extend the deadline. The commissioner may make corrections and other changes, as appropriate.

(D) The insurer shall, within 30 days, accept the final report, accept the findings of the report or request a hearing. An additional 30 days shall be allowed if agreed to by the Commissioner and the insurer. Any such hearing request must be made in writing and must follow [insert reference to appropriate administrative procedure act].

(2) States shall include the company's response in the final report. The response may be included as an appendix or in the text of the examination report. The company is not obligated to submit a response. Individuals involved in the examination should not be named in either the report or the response except to acknowledge their involvement.

Drafting Note: States should rely upon the NAIC Market Conduct Examiners Handbook to establish specific standards for examination reports.

(i) (1) Upon adoption of the examination report pursuant to subsection (h), the commissioner shall continue to hold the content of the examination report as private and confidential for a period of 30 days, except to the extent provided for in paragraph 2 of this subsection. Thereafter, the Commissioner shall open the report for public inspection, provided no court of competent jurisdiction has stayed its publication.

(2) Nothing contained in this Act shall prevent or be construed as preventing the commissioner from disclosing the content of an examination report, preliminary examination report or results, or any matter relating thereto, to the insurance department of this or any other state or agency of the federal government at any time, provided the agency or office receiving the report or matters relating thereto agrees to hold it confidential and in a manner consistent with this Act.

(j) (1) Where the reasonable and necessary cost of a market conduct examination are to be assessed against the insurer under examination, such fees shall be consistent with that otherwise authorized by law. Such fees shall be itemized and bills shall be provided to the insurer on a monthly basis for review prior to submission for payment.

(2) The Commissioner shall maintain active management and oversight of examination costs, including costs associated with his/her own examiners and with retaining qualified contract examiners necessary to perform an on-site examination. To the extent the Commissioner retains outside assistance, the Commissioner must have in writing protocols that:

(A) Clearly identify the types of functions to be subject to outsourcing;

(B) Provide specific timelines for completion of the outsourced review;

- (C) Require disclosure of contract examiners' recommendations;
 - (D) Establish and utilize a dispute resolution or arbitration mechanism to resolve conflicts with insurers regarding examination fees; and
 - (E) Require disclosure of the terms of the contracts with the outside consultants that will be used, specifically the fees and/or hourly rates that can be charged.
- (3) The Commissioner shall review and affirmatively endorse detailed billings from the qualified contract examiner before the detailed billings are sent to the insurer.

Section 7. Confidentiality Requirements

- (a) Except as otherwise provided by law, market conduct surveillance personnel shall have free and full access to all books and records, employees, officers and directors, as practicable, of the insurer during regular business hours. An insurer utilizing a third-party model or product for any of the activities under examination shall cause, upon the request of market conduct surveillance personnel, the details of such models or products to be made available to such personnel. All documents, including but not limited to working papers, third party models or products, complaint logs, and copies thereof, created, produced or obtained by or disclosed to the Commissioner or any other person in the course of any market conduct actions made pursuant to this Act, or in the course of market analysis by the commissioner of the market conditions of an insurer, or obtained by the NAIC as a result of any of the provisions of this Act, shall be confidential by law and privileged, shall not be subject to subpoena and shall not be subject to discovery or admissible in evidence in any private civil action.

Drafting Note: If the state has enacted an insurer self-evaluative privilege law, the provisions of Section 7 (a) may need to be revised to be consistent with that law.

- (b) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the Commissioner under this section.
- (c) Market conduct surveillance personnel shall be vested with the power to issue subpoenas and examine insurance company personnel under oath when such action is ordered by the Commissioner pursuant to (cite the appropriate state authority).
- (d) Notwithstanding the provisions of paragraph (a) of this subsection, in order to assist in the performance of the Commissioner's duties, the Commissioner may:
- (1) share documents, materials or other information, including the confidential and privileged documents, materials or information subject to paragraph (a), with other state, federal and international regulatory agencies and law enforcement authorities and the NAIC and its affiliates and subsidiaries, provided that the recipient agrees to and has the legal authority to maintain the confidentiality and privileged status of the document, material, communication or other information;

- (2) receive documents, materials, communications or information, including otherwise confidential and privileged documents, materials or information, from the NAIC and its affiliates or subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information; and
- (3) enter into agreements governing the sharing and use of information consistent with this subsection.

Drafting Note: States may consider enacting an insurer self-evaluation privilege law, which some believe encourages insurers' to identify and remedy insurance and other compliance problems. Such laws typically provide for a limited expansion of the protection against disclosure.

Section 8. Market Conduct Surveillance Personnel

- (a) Market conduct surveillance personnel shall be qualified by education, experience and, where applicable, professional designations. The Commissioner may supplement the in-house market conduct surveillance staff with qualified outside professional assistance if he/she determines that such assistance is necessary.
- (b) Market conduct surveillance personnel have a conflict of interest, either directly or indirectly, if they are affiliated with the management, have been employed by, or own a pecuniary interest in the insurer subject to any examination under this Act. This section shall not be construed to automatically preclude an individual from being:
 - (1) A policyholder or claimant under an insurance policy;
 - (2) A grantee of a mortgage or similar instrument on the individual's residence from a regulated entity if done under customary terms and in the ordinary course of business;
 - (3) An investment owner in shares of regulated diversified investment companies; or
 - (4) A settlor or beneficiary of a "blind trust" into which any otherwise permissible holdings have been placed.

Section 9. Immunity for Market Conduct Surveillance Personnel

- (a) No cause of action shall arise nor shall any liability be imposed against the Commissioner, the Commissioner's authorized representatives or an examiner appointed by the Commissioner for any statements made or conduct performed in good faith while carrying out the provisions of this Act.
- (b) No cause of action shall arise, nor shall any liability be imposed against any person for the act of communicating or delivering information or data to the Commissioner or the Commissioner's authorized representative or examiner pursuant to an examination made under this Act, if the act of communication or delivery was performed in good faith and without fraudulent intent or the intent to deceive.

- (c) A person identified in subsection (a) shall be entitled to an award of attorney's fees and costs if he or she is the prevailing party in a civil cause of action for libel, slander or any other relevant tort arising out of activities in carrying out the provisions of this Act and the party bringing the action was not substantially justified in doing so. For purposes of this section a proceeding is "substantially justified" if it had a reasonable basis in law or fact at the time that it was initiated.
- (d) This section does not abrogate or modify in any way any common law or statutory privilege or immunity heretofore enjoyed by any person identified subsection (a).

Section 10. Fines and Penalties

- (a) Fines and penalties levied as a result of a market conduct action or other provisions of the state Insurance Law shall be consistent, reasonable and justified.
- (b) The Commissioner shall take into consideration actions taken by insurers to maintain membership in, and comply with the standards of, best-practice organizations that promote high ethical standards of conduct in the marketplace, and the extent to which insurers maintain regulatory compliance programs to self assess, self-report and remediate problems detected and may include those considerations in determining the appropriate fines levied in accordance with subsection (a).

Drafting Note: It is anticipated that best practice organizations such as the Insurance Marketplace Standards Association (IMSA) in the life insurance industry, and the National Committee for Quality Assurance (NCQA) and the Utilization Review Accreditation Commission (URAC) in the health insurance industry, will play an important role in market conduct by expanding the frequency of voluntary insurer compliance programs. To the extent that these or similar organizations, through their compliance qualification process and procedures, can foster a culture of compliance, their contribution to market conduct surveillance should be recognized. The NAIC Best Practices Organization White Paper discusses the operational and performance standards for a best practices organization that seeks regulatory recognition for the entities the best practice organization accredits.

Section 11. Participation in National Market Conduct Databases

- (a) The Commissioner shall collect and report market data to the NAIC's market information systems, including the Complaint Database System, the Examination Tracking System, and the Regulatory Information Retrieval System, or other successor NAIC products as determined by the Commissioner.
- (b) Information collected and maintained by the Insurance Department shall be compiled in a manner that meets the requirements of the NAIC.

Section 12. Coordination with Other States Through the NAIC

- (a) The Commissioner shall share information and coordinate the Insurance Department's market analysis and examination efforts with other states through the NAIC.

Drafting Note: The NAIC Market Analysis Working Group is the national, confidential forum established by the NAIC to provide regulators with opportunities to share and coordinate the results of their market analysis programs and market conduct actions. States participating in MAWG are expected to conduct their market analysis programs in a manner consistent with guidelines adopted by the NAIC. Adoption of this (or a similar) model law, coupled with expanded participation in MAWG by states, will help foster the goal of domestic deference and other appropriate forms of interstate collaboration, thereby helping to fulfill the goal of making market conduct surveillance a national system of regulation that is more standard and uniform.

Section 13. Additional Duties of the Commissioner

- (a) At least once per year, or more frequently if deemed necessary, the Commissioner shall provide in an appropriate manner to insurers and other entities subject to the scope of (cite Insurance Code citation) information on new laws and regulations, enforcement actions and other information the Commissioner deems pertinent to ensure compliance with market conduct requirements. The failure of the Commissioner to provide any such information shall not be a defense for any insurer that fails to comply with any insurance law of this state.
- (b) The Commissioner shall designate a specific person or persons within the Insurance Department whose responsibilities shall include the receipt of information from employees of insurers and licensed entities concerning violations of laws, rules or regulations by employers, as defined in this section. Such person or persons shall be provided with proper training on the handling of such information, which shall be deemed a confidential communication for the purposes of this section.

Drafting Note 1: The provisions of subsection (b) relating to the designation by the Commissioner of an employee to receive "whistleblower" type complaints may be added to an existing whistleblower statute, added as drafted above or omitted.

Drafting Note 2: States that choose to impose additional duties or responsibilities on their own Insurance Commissioners may insert additional subdivisions to this section.

Section 14. Effective Date This Act shall take effect *[insert chosen date]*.



PRESIDENT: REP. CRAIG EILAND, TX
VICE PRESIDENT: REP. FRANK WALD, ND
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TREASURER: REP. BRIAN KENNEDY, RI
EXECUTIVE COMMITTEE CHAIR: SEN. JAMES SEWARD, NY

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS PROPERTY/CASUALTY INSURANCE MODERNIZATION ACT

*Adopted by the NCOIL Executive Committee on July 13, 2001.
Amended by the NCOIL Executive Committee on November 16, 2001, and March 1, 2002.
Reviewed and amended by the NCOIL Executive Committee on November 21, 2003.*

Summary

This model bill establishes a use and file rate regulatory system for personal lines of insurance, a no-file system for commercial lines, and allows policies sold to large, sophisticated commercial insurance providers to be exempt from rate and regulatory requirements. This creates a more competitive and less onerous regulatory industry. This model is intended for consideration in insurance regulatory jurisdictions with a more restrictive rate filing and review system than outlined in the bill.

Section 1. {Short Title}

This act shall be known as the *Property/Casualty Insurance Modernization Act*.

Section 2. {Legislative Declaration}

This legislature finds and declares that a modernized and competitive procedure be employed

- A. To recognize and enhance the role well-informed consumers play in the competitive marketplace;
- B. To promote price competition among insurers;
- C. To protect policyholders and the public against adverse effects of excessive, inadequate or unfairly discriminatory rates;
- D. To prohibit unlawful price fixing agreements by or among insurers;

- E. To authorize essential cooperative activities among insurers in the ratemaking process and to regulate such activities to prohibit practices that tend to substantially lessen competition or create monopolies; and
- F. To provide necessary regulatory authority in the absence of a competitive marketplace.

Drafting Note: This model is intended for consideration in insurance regulatory jurisdictions with a more restrictive rate filing and review system than outlined in this bill. States may also wish to consider implementing a competitive rating law that eliminates the regulatory rate filing process for all lines of insurance that are competitive.

Section 3. {Definitions}

- A. For the purpose of this Act, "Advisory organization" means any person or organization, which has five unrelated members and which assists insurers as authorized by Section 11. It does not include joint underwriting organizations, actuarial or legal consultants, single insurers, any employees of an insurer, or insurers under common control or management of their employees or managers.
- B. For the purpose of this Act, "Classification system" or "classification" means the process of grouping risks with similar risk characteristics so that differences in costs may be recognized.
- C. For the purpose of this Act "Commercial risk" means any kind of risk, which is not a personal risk.
- D. For the purpose of this Act, "Commissioner" means the Commissioner or Director or Superintendent of Insurance of this state.
- E. For the purpose of this Act, "Competitive market" means any market except those which have been found to be non-competitive pursuant to Section 5.
- F. For the purpose of this Act, "Developed losses" means losses (including loss adjustment expenses) adjusted, using standard actuarial techniques, to eliminate the effect of differences between current payment or reserve estimates and those which are anticipated to provide actual ultimate loss (including loss adjustment expense) payments.
- G. For the purpose of this Act, "Expenses" means that portion of a rate attributable to acquisition, field supervision, collection expenses, general expenses, taxes, licenses and fees.

- H. For the purpose of this Act, "Experience rating" means a rating procedure utilizing past insurance experience of the individual policyholder to forecast future losses by measuring the policyholder's loss experience against the loss experience of policyholders in the same classification to produce a prospective premium credit, debit or unity modification.
- I. For the purpose of this Act, "Joint underwriting" means an arrangement established to provide insurance coverage for a risk, pursuant to which two or more insurers contract with the insured for a price and policy terms agreed upon between or among the insurers.
- J. For the purpose of this Act, "Large Commercial Policyholder" is a commercial policyholder with the size, sophistication, and insurance-buying expertise to negotiate with insurers in a largely unregulated environment and which meets at least two of the following criteria: (1) aggregate premium on commercial policies held by the insured, including workers' compensation, (2) number of employees, (3) annual net revenues or sales, (4) net worth, (5) annual budgeted expenditures for not-for profit organizations or a public body or agencies, or (6) population for municipalities.

Drafting Note: Specific criteria may require a large commercial policyholder to generate annual net revenues or sales in excess of \$50,000,000; employ more than 50 employees; procure insurance through a full-time risk manager or retained qualified insurance consultant; possess net worth in excess of \$25,000,000; or, if a nonprofit organization or public body/agency, generate annual budgeted expenditures of at least \$25,000,000.

- K. For the purpose of this Act, "Loss adjustment expense" means the expenses incurred by the insurer in the course of settling claims.
- L. For the purpose of this Act, "Market" is the statewide interaction between buyers and sellers in the procurement of a line of insurance coverage pursuant to the provisions of this Act.

Drafting Note: A state may wish to consider a geographic area smaller than the statewide market to be tested, keeping in mind the state's particular insurance market environment.

- M. For the purpose of this Act, "Non-competitive market" means a market, which is subject to a ruling pursuant to Section 5 that a reasonable degree of competition does not exist, and, for the purposes of this Act, residual markets, and pools are non-competitive markets.
- N. For the purpose of this Act, "Personal risk" means homeowners, tenants, non-fleet private passenger automobiles, mobile homes and other property and casualty insurance for person, family or household needs. This includes any property and casualty insurance that is otherwise intended for non-commercial coverage.

- O. For the purpose of this Act, "Pool" means an arrangement pursuant to which two or more insurers participate in the sharing of risks on a predetermined basis. A pool may operate as an association, syndicate or in any other generally recognized manner.
- P. For the purpose of this Act, "Prospective loss cost" means that portion of a rate that does not include provisions for expenses (other than loss adjustment expenses) or profit, and are based on historical aggregate losses and loss adjustment expenses adjusted through development to their ultimate value and projected through trending to a future point in time.
- Q. For the purpose of this Act, "Rate" means that cost of insurance per exposure unit whether expressed as a single number or as a prospective loss cost with an adjustment to account for the treatment of expenses, profit, and individual insurer variation in loss experience, prior to any application of individual risk variations based on loss or expense considerations, and does not include minimum premiums.
- R. For the purpose of this Act, "Residual market mechanism" means an arrangement, either voluntary or mandated by law, involving participation by insurers in the equitable apportionment of risks among insurers for insurance which may be afforded applicants who are unable to obtain insurance through ordinary methods.
- S. For the purpose of this Act, "Special assessments" means guaranty fund assessments, Special Indemnity Fund assessments, Vocational Rehabilitation Fund assessments, and other similar assessments. Special assessments shall not be considered as either expenses or losses.
- T. For the purpose of this Act, "Supplementary rate information" means any manual or plan of rates, classification, rating schedule, minimum premium, policy fee, rating rule and any other similar information needed to determine an applicable rate in effect or to be in effect.
- U. For the purpose of this Act, "Supporting information" means (a) the experience and judgment of the filer and the experience or data of other insurers or organizations relied upon by the filer, (b) the interpretation of any statistical data relied upon by the filer, (c) a description of methods used in making the rates and (d) other similar information relied upon by the filer.
- V. For the purpose of this Act, "Trending" means any procedure for projecting losses to the average date of loss, or premiums or exposures to the average date of writing, for the period during which the policies are to be effective.

Section 4. {Scope}

- A. This Act applies to all kinds of insurance written on risks in this state by any insurer authorized to do business in this state except:

1. Life insurance;
2. Annuities;
3. Accident and health-insurance;
4. Ocean marine insurance;
5. Aircraft liability and aircraft hull insurance;
6. Reinsurance;
7. Surplus Lines; and
8. Workers Compensation Insurance.

Section 5. {Competitive Market}

- A. A competitive market for a line of insurance is presumed to exist unless the commissioner, after notice and hearing, determines that a reasonable degree of competition does not exist within a market and issues a ruling to that effect. The burden of proof in any hearing shall be placed on the party or parties advocating the position that competition does not exist. Any ruling that a market is not competitive shall identify the factors causing the market not to be competitive. Such ruling shall expire one year after issue unless rescinded earlier by the commissioner or unless the commissioner renews the ruling after a hearing and a finding as to the continued lack of a reasonable degree of competition. Any ruling that renews the finding that competition does not exist shall also identify the factors that cause the market to continue not to be competitive.
- B. The following factors shall be considered by the commissioner for purposes of determining if a reasonable degree of competition does not exist in a particular line of insurance:
 1. The number of insurers or groups of affiliated insurers providing coverage in the market;
 2. Measures of market concentration and changes of market concentration over time;
 3. Ease of entry and the existence of financial or economic barriers that could prevent new firms from entering the market;
 4. The extent to which any insurer or group of affiliated insurers controls all or a portion of the market;
 5. Whether the total number of companies writing the line of insurance in this state is sufficient to provide multiple options;
 6. The availability of insurance coverage to consumers in the markets; and
 7. The opportunities available to consumers in the market to acquire pricing and other consumer information.
- C. The commissioner shall monitor the degree and continued existence of competition in this State on an on-going basis. In doing so, the commissioner may utilize existing relevant information, analytical systems and other sources; or rely on some combination thereof. Such activities may be conducted internally within the

insurance department, in cooperation with other state insurance departments, through outside contractors and/or in any other appropriate manner.

Section 6. {Rating Standards and Methods}

A. Rates shall not be excessive, inadequate or unfairly discriminatory.

1. For the purpose of this Act, "Excessive" means a rate that is likely to produce a long-term profit that is unreasonably high for the insurance provided. No rate in a competitive market shall be considered excessive.

Drafting Note: Reflecting the well-accepted economic principle that costs and prices are driven downward by competition, insurance laws in seventeen (17) states do not allow a finding of excessiveness in a competitive market. Those seventeen (17) states are: Arkansas, Connecticut, Delaware, Georgia, Idaho, Illinois, Indiana, Kentucky, Michigan, Missouri, Montana, Nevada, Oklahoma, Oregon, Vermont, Virginia and Wyoming. Insurance laws in five (5) other states say that rates are "presumed" not to be excessive if there is a reasonable degree of competition. Those five (5) states are: Arizona, Kansas, Minnesota, New Mexico and Wisconsin.

2. For the purpose of this Act, "Inadequate" means a rate which is unreasonably low for the insurance provided and
 - a. the continued use of which endangers the solvency of the insurers using it; or,
 - b. will have the effect of substantially lessening competition or creating a monopoly in any market.
3. a. For the purpose of this Act, "Unfairly discriminatory" refers to rates that cannot be actuarially justified. It does not refer to rates that produce differences in premiums for policyholders with like loss exposures, so long as the rate reflects such differences with reasonable accuracy. A rate is not unfairly discriminatory if it averages broadly among persons insured under a group, franchise or blanket policy, or a mass marketing plan.
 - b. No rate in a competitive market shall be considered unfairly discriminatory unless it violates the provisions of section 6(B) in that it classifies risk, on the basis of race, color creed or national origin.

Risks may be classified in any way except that no risk may be classified on the basis of race, color, creed or national origin.

B. In determining whether rates in a non-competitive market are excessive, inadequate or unfairly discriminatory, consideration may be given to the following elements:

1. **Basic Rate Factors.** Due consideration shall be given to past and prospective loss and expense experience within and outside of this state, to catastrophe hazards and contingencies, to events or trends within and outside of this state, to dividends or savings to policyholders, members or subscribers, and to all other factors and judgments deemed relevant by the insurer.
2. **Classification.** Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified for individual risks in accordance with rating plans or schedules which establish standards for measuring probable variations in hazards or expenses, or both.
3. **Expenses.** The expense provision shall reflect the operating methods of the insurer and its own past expense experience and anticipated future expenses.
4. **Contingencies and Profits.** The rates shall contain a provision for contingencies and a provision for a reasonable underwriting profit, and reflect investment income directly attributable to unearned premium and loss reserves.
5. **Other relevant factors.** Any other factors available at the time of hearing.

Section 7. {Rate Regulation in a Market Determined to be Non-Competitive}

- A. If the commissioner determines that competition does not exist in a market and issues a ruling to that effect pursuant to Section 5, the rates applicable to insurance sold in that market shall be regulated in accordance with the provisions of Section 6 through 9 applicable to non-competitive markets.
- B. Any rate filing in effect at the time the commissioner determines that competition does not exist pursuant to Section 5 shall be deemed to be in compliance with the laws of this state unless disapproved pursuant to the procedures and rating standards contained in Section 6 through 9 applicable to non-competitive markets.
- C. Any insurer having a rate filing in effect at the time the commissioner determines that competition does not exist pursuant to Section 5 may be required to furnish supporting information within 30 days of a written request by the commissioner.

Section 8. {Filing of Rates, Supplementary Rate Information and Supporting Information}

- A. **Filings in Competitive Markets.** For personal lines, every insurer shall file with the commissioner all rates and supplementary rate information to be used in this state no later than 30 days after the effective date; provided, that such rates and supplementary rate information need not be filed for inland marine risks, which by

general custom are not written according to manual rules or rating plans. Rates in a competitive market for commercial insurance need not be filed.

B. Filings in Non-Competitive Markets.

1. Every insurer shall file with the commissioner all rates, supplementary rate information and supporting information for non-competitive markets at least 30 days before the proposed effective date. The commissioner may give written notice, within 30 days of the receipt of the filing, that the commissioner needs additional time, not to exceed 30 days from the date of such notice to consider the filing. Upon written application of the insurer, the commissioner may authorize rates to be effective before the expiration of the waiting period or an extension thereof. A filing shall be deemed to meet the requirements of this Act and to become effective unless disapproved pursuant to Section 9 by the commissioner before the expiration of the waiting period or an extension thereof. Residual market mechanisms or advisory organizations may file residual market rates.
2. The filing shall be deemed in compliance with the filing provisions of this section unless the commissioner informs the insurer within 10 days after receipt of the filing as to what supplementary rate information or supporting information is required to complete the filing.

C. Reference Filings. An insurer may file its rates by either filing its final rates or by filing a multiplier and, if applicable, an expense constant adjustment to be applied to prospective loss costs that have been filed by an advisory organization on behalf of the insurer as permitted by Section 11.

D. Filings Open to Inspection. All rates, supplementary rate information and any supporting information filed under this Act shall be open to public inspection once they have been filed except information marked confidential, Trade Secret or proprietary by the insurer or filer. Copies may be obtained from the commissioner upon request and upon payment of a reasonable fee.

E. Consent to Rate. Notwithstanding any other provisions of this section, upon written application of the insured, stating the reason therefore, a rate in excess of or below that otherwise applicable may be used on any specific risk.

Section 9. (Disapproval of Rates)

A. Bases for Disapproval

1. The commissioner shall disapprove a rate in a competitive market only if the commissioner finds pursuant to subsection (B) of this section that the rate is

inadequate under Section 6(A)(2) or unfairly discriminatory under Section 6(A)(3)(b).

2. The commissioner may disapprove a rate for use in a non-competitive market only if the commissioner finds pursuant to subsection (B) of this section that the rate is excessive, inadequate or unfairly discriminatory under Section 6A.

B. Procedures for Disapproval

1. Prior to the expiration of the waiting period or an extension thereof of a filing made pursuant to Section 8, subsection (B), the commissioner may disapprove by written order rates filed pursuant to Section 8, subsection (B) without a hearing. The order shall specify in what respects such filing fails to meet the requirements of this Act. Any insurer whose rates are disapproved under this section shall be given a hearing upon written request made within 30 days of disapproval.
2. If, at any time, the commissioner finds that a rate applicable to insurance sold in a non-competitive market does not comply with the standards set forth in Section 6, the commissioner may, after a hearing held upon not less than 20 days written notice, issue an order pursuant to subsection 9(C) disapproving such rate. The Hearing notice shall be sent to every insurer and advisory organization that adopted the rate and shall specify the matters to be considered at the hearing. The disapproval order shall not affect any contract or policy made or issued prior to the effective date set forth in said order.
3. If, at any time, the commissioner finds that a rate applicable to insurance sold in a competitive market is inadequate under Section 6(A)(3)(a) or unfairly discriminatory under Section 6(A)(3)(b), the commissioner may issue an order pursuant to subsection 9(C) disapproving the rate. Said order shall not affect any contract or policy made or issued prior to the effective date set forth in said order.

C. Order of Disapproval. If the commissioner disapproves a rate pursuant to subsection (B) of this section, the commissioner shall issue an order within 30 days of the close of the hearing specifying in what respects such rate fails to meet the requirements of this Act. The order shall state an effective date no sooner than 30 business days after the date of the order when the use of such rate shall be discontinued. This order shall not affect any policy made before the effective date of the order.

D. Appeal of Orders; Establishment of Reserves. If an order of disapproval is appealed pursuant to Section 20 the insurer may implement the disapproved rate upon notification to the court, in which case any excess of the disapproved rate over a rate previously in effect shall be placed in a reserve established by the insurer. The court shall have control over the disbursement of funds from such reserve. Such funds shall

be distributed as determined by the court in its final order except that de minimus refunds to policyholders shall not be required.

Section 10. {Large Commercial Policyholder}

- A. A policy of insurance sold to a "Large Commercial Policyholder," as defined in Section 3(J), shall not be subject to the requirements of this chapter, including but not limited to, Sections 5,6,7,8, and 9. The forms and endorsements for any policy sold to a "Large Commercial Policyholder" shall not be subject to filing and approval requirements of (*reference form filing and approval provisions plus other applicable provisions*).
- B. All policies issued pursuant to the provisions of this section shall contain a conspicuous disclaimer printed in at least ten-point, bold-faced type that states that the policy applied for (including the rates, rating plans, resulting premiums, and the policy forms) is not subject to the rate and form requirements of this state and other provisions of the insurance law that apply to other commercial products and may contain significant differences from a policy that is subject to all provisions of the insurance law. Such notice shall set forth possible differences in policy conditions, forms, and endorsements, as compared to a policy that is subject to all of the provisions of the insurance law. The format and provisions of such notice shall be prescribed by the commissioner. The disclosure notice will also include a policyholder's acknowledgment statement, to be signed and dated prior to the effective date of the coverage, and shall remain on file with the insurer.
- C. In procuring insurance, a "Large Commercial Policyholder" shall certify on a form approved by the department of insurance that it meets the eligibility requirements set out in Section 10(A) and specify the requirements that the policyholders has met. This certification is to be completed annually and remain on file with the insurer.
- D. A surplus lines broker seeking to obtain or provide insurance for a "Large Commercial Policyholder" is authorized to purchase insurance from any eligible unauthorized insurer without making a diligent search of authorized insurers as required by (*applicable surplus lines law*).

Section 11. {Records and Reports: Exchange of Information}

- A. In only those markets found to be non-competitive pursuant to Section 5, insurers and advisory organizations shall file with the commissioner, and the commissioner shall review, reasonable rules and plans for recording and reporting of loss and expense experience. The commissioner may designate one or more advisory organizations to assist in gathering such experience and making compilations thereof. No insurer shall be required to record or report its experience in a manner inconsistent with its own rating system.

- B. The commissioner and every insurer and advisory organization may exchange rates and rate information and experience data with insurance regulatory officials, insurers, and advisory organizations in this and other states and may consult with them with respect to the collection of statistical data and the application of rating systems.

Section 12. {Joint Underwriting, Pool and Residual Market Activities}

- A. Acting in Concert. Notwithstanding the provisions of Section 13 insurers participating in joint underwriting, pools or residual market mechanisms may act in cooperation with each other in the making of rates, rating systems, supplementary rate information, policy or bond forms, underwriting rules, surveys, inspections and investigations; in the furnishing of loss and expense statistics or other information; and in conducting research. Joint underwriting, pools and residual market mechanisms shall not be deemed advisory organizations.

- B. Regulation

1. If, after notice and hearing, the commissioner finds that any activity or practice of an insurer participating in a joint underwriting or pooling mechanism is unfair, unreasonable, will tend to substantially lessen competition in any market, or is otherwise inconsistent with the provisions or purposes of this Act and all other applicable statutes, the commissioner may issue a written order specifying in what respects such activity or practice is unfair, unreasonable, anti-competitive or otherwise inconsistent with the provisions of this Act and all other applicable statutes, and require the discontinuance of such activity or practice.
2. Every pool shall file with the commissioner a copy of its constitution, articles of incorporation, agreement or association bylaws, rules and regulations governing activities, its members, the name and address of a resident of this state upon whom notices, process and orders of the commissioner may be served and any changes or modifications thereof.
3. Any residual market mechanism, plan or agreement to implement such a mechanism and any changes or amendments thereto, shall be submitted in writing to the commissioner for approval, together with such information as may be reasonably required. The commissioner shall approve such agreements if they foster (i) the use of rates which meet the standards prescribed by this Act and all other applicable statutes and (ii) activities and practices not inconsistent with the provisions of this Act and all other applicable statutes.
4. The commissioner may review the operations of all residual market mechanisms to determine compliance with the provisions of this Act and all

other applicable statutes. If after a notice of hearing, the commissioner finds that such mechanisms are violating the provisions of this Act and all other applicable statutes, the commissioner may issue a written order to the parties involved specifying in what respects such operations violate the provisions of this Act and all other applicable statutes. The commissioner may further order the discontinuance or elimination of any such operation.

Section 13. {Assigned Risks}

- A. Agreements may be made among insurers with respect to the equitable apportionment among them of insurance that may be afforded applicants who are in good faith entitled to, but who are unable to, procure such insurance through ordinary methods, and such insurers may agree among themselves on the use of reasonable rate modifications for such insurance, such agreements and rate modifications to be subject to the approval of the commissioner.

Drafting Note: This section is to be included if the current provision authorizing agreements for the assigned risk or other residual market is repealed as part of the current rating law. You may wish to pick up current state provisions.

Section 14. {Examinations}

- A. The commissioner may examine any insurer, pool, advisory organization, or residual market mechanism to ascertain compliance with this Act.
- B. Every insurer, pool, advisory organization, and residual market mechanism shall maintain adequate records from which commissioner may determine compliance with the provisions of this Act. Such records shall contain the experience, data, statistics and other information collected or used and shall be available to the commissioner for examination or inspection upon reasonable notice.
- C. The reasonable cost of an examination made pursuant to this section shall be paid by the examined party upon presentation to it of a detailed account of such costs.
- D. The commissioner may accept the report of an examination made by the insurance supervisory official of another state in lieu of an examination under this section.

Section 15. {Exemptions}

The commissioner may, after public notice and hearing, exempt any line of insurance from any or all of the provisions of this Act for the purpose of relieving such line of insurance from filing or any otherwise applicable provisions of this Act.

Section 16. {Consumer Information}

The Commissioner shall utilize, develop or cause to be developed a consumer information system(s) which will provide and disseminate price and other relevant information on a readily available basis to purchasers of homeowners, private passenger non-fleet automobile, or property insurance for personal, family or household needs. The commissioner may utilize, develop or cause to be developed a consumer information system(s) which will provide and disseminate price and other relevant information on a readily available basis to purchasers of insurance for commercial risks and personal risks not otherwise specified herein. Such activity may be conducted internally within the insurance department, in cooperation with other state insurance departments, through outside contractors and/or in any other appropriate manner. To the extent deemed necessary and appropriate by the commissioner, insurers, advisory organizations, statistical agents and other persons or organizations involved in conducting the business of insurance in this State, to which this section applies, shall cooperate in the development and utilization of a consumer information system(s).

Drafting Note: For jurisdictions that need a separate and distinct means of funding a consumer information system the following provision may be added to Section 16:

The cost of complying with this section shall be assessed against insurers subject to this Act and authorized to write types of business subject to a consumer information system. The assessments shall be made on an equitable and practicable basis established, after hearing, in a rule promulgated by the commissioner. This activity shall be conducted in a reasonably economical manner consistent with the purposes of this Act.

Section 17. {Dividends}

Nothing in this Act shall be construed to prohibit or regulate the payment of dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers. A plan for the payment of dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers shall not be deemed a rating plan or system.

Section 18. {Penalties}

- A. The commissioner may impose after notice and hearing a penalty determined in accordance with *(refer to appropriate penalties provision)*.
- B. Technical violations arising from systems or computer errors of the same type shall be treated as a single violation. In the event of an overcharge, if the insurer makes restitution including payment of interest, no penalty shall be imposed.
- C. The commissioner may suspend or revoke the license of any insurer, advisory organization, or statistical agent which fails to comply with an order of the commissioner within the time prescribed by such order, or any extension thereof which the commissioner may grant.

- D. The commissioner may determine when a suspension of license shall become effective and the period of such suspension, which the commissioner may modify or rescind in any reasonable manner.
- E. No penalty shall be imposed and no license shall be suspended or revoked except upon a written order of the commissioner stating his or her findings, made after notice and hearing.

Section 19. {Judicial Review}

- A. Any order, ruling, finding, decision or other act of the commissioner made pursuant to this Act shall be subject to judicial review in accordance with *(cite applicable provisions of state civil practice act)*.

Section 20. {Notice and Hearing}

- A. Notice Requirements. All notices rendered pursuant to the provisions of this Act shall be in writing and shall state clearly the nature and purpose of the hearing. All relevant facts, statutes and rules shall be specified so that respondent(s) are fully informed of the scope of the hearing, including specific allegations, if any. If a hearing is required, all notices shall designate a hearing date at least 14 days from the date of the notice, unless such minimum notice period is waived by respondents.
- B. Hearings. All hearings pursuant to the provisions of this act shall be conducted in accordance with *(cite applicable provisions of Administrative Procedures Act)* to the extent such provisions are consistent with the procedural requirements contained in this Act.

Section 21. {Severability}

If any provision or item of this Act, or the application thereof, is held invalid, such invalidity shall not affect other provisions, items, or applications of the Act that can be given effect without the invalid provision, item, or application.

Section 22. {Effective Date}

The provisions of this Act become effective _____ months after the enactment.



PRESIDENT: REP. CRAIG EILAND, TX
VICE PRESIDENT: REP. FRANK WALD, IN
SECRETARY: SEN. ALAN SANBORN, MI
TREASURER: REP. BRIAN KENNEDY, RI
EXECUTIVE COMMITTEE CHAIR: SEN. JAMES SEWARD, NY

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS PROPERTY/CASUALTY FLEX-RATING REGULATORY IMPROVEMENT MODEL ACT

Adopted by the NCOIL Property-Casualty Insurance and Executive Committees on February 27, 2004.

Sponsored by Sen. David Bates (RI) and Rep. Brian Kennedy (RI)

Drafting Note: This model is intended for consideration in jurisdictions with a more restrictive rate-filing and review system than outlined in this bill. The model is intended to serve as an interim approach to enactment of an open competition-based system, as endorsed by the National Conference of Insurance Legislators (NCOIL) Property/Casualty Insurance Modernization Act.

Section 1. Short Title

This Act shall be known as the *Property/Casualty Flex-Rating Regulatory Improvement Model Act*.

Section 2. Scope

This Act applies to personal lines insurance written on risks in this state by any insurer authorized to do business in this state.

Section 3. Flex-Rating Provisions

- A. Notwithstanding the requirements of [*insert citations of state laws providing for the filing, review, approval, and/or disapproval of rates for property and casualty insurance*], a filing made by an insurer under this section that provides for an overall statewide rate increase or decrease of no more than twelve (12) percent in the aggregate for all coverages that are subject to the filing may take effect the date it is filed. The twelve (12) percent limitation does not apply on an individual insured basis. No more than one rate filing may be made by an insurer pursuant to the expedited process provided in this subsection during any twelve-month period, unless a rate filing, when

combined with any other rate filing or filings made by an insurer within the preceding twelve (12) months, does not result in an overall statewide increase or decrease of more than twelve (12) percent in the aggregate for all coverages that are subject to the filing.

- B. Rate filings falling outside of the limitation provided for in subsection (A) of this section shall be subject to *[insert citations to the appropriate filing and review provisions of the insurance code]*, unless those filings are other exempt from those provisions pursuant to another section of the insurance code.
- C. A filing submitted pursuant to subsection (A) of this section is considered to comply with state law. However, if the Commissioner of Insurance determines that the filing is inadequate or unfairly discriminatory, he/she shall issue a written order specifying in detail the provisions of the insurance code the insurer has violated and the reasons the filing is inadequate or unfairly discriminatory and stating a reasonable future date on which the filing is to be considered no longer effective. An order by the Commissioner pursuant to this subsection that is issued more than thirty (30) days from the date on which the Commissioner received the rate filing is prospective only and does not affect any contract issued or made before the effective date of the order. For purposes of this Act, "unfairly discriminatory" means a rate for a risk that is classified in whole or in part on the basis of race, color, creed, or national origin.
- D. No rate increase within the limitation specified in subsection (A) of this section may be implemented with regard to an individual existing policy, unless the increase is applied at the time of a renewal or conditional renewal of an existing policy and the insurer, at least thirty (30) days in advance of the end of the insured's policy period, mails or delivers to the named insured, at the address shown in the policy, a written notice that clearly and conspicuously discloses its intention to change the rate. A notice of renewal or conditional renewal that clearly and conspicuously discloses the renewal premium applicable to the policy shall be deemed to be in compliance with this subsection.

Section 4. Effective Date

This Act shall take effect thirty (30) days after its approval by the Governor.



PRESIDENT: REP. CRAIG ELLAND, TX
VICE PRESIDENT: REP. FRANK WALD, ND
SECRETARY: SEN. ALAN SANBORN, MI
TREASURER: REP. BRIAN KENNEDY, RI
EXECUTIVE COMMITTEE CHAIR: SEN. JAMES SEWARD, NY

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS COMPANY LICENSING MODERNIZATION MODEL ACT

*Adopted by the NCOIL State-Federal Relations and Executive Committees on July 12, 2002.
Readopted by the NCOIL State-Federal Relations and Executive Committees on November 19,
2004.*

Purpose – *The purpose of this act is to promote consistency among the 50 states in licensing insurance companies by use of common licensing requirements, forms, and procedures.*

Section 1 – The Commissioner of Insurance shall apply only the requirements set forth in form and detail in the Uniform Certificate of Authority Application (UCAA), and any supplemental forms promulgated pursuant to the UCAA published by the National Association of Insurance Commissioners (NAIC), as of the effective date of this act, in order to license insurers to do business in this state.

Section 2 – Revisions to the Uniform Certificate of Authority Application (UCAA) and supplemental forms promulgated pursuant to the UCAA, published by the NAIC, are incorporated by reference into this law, and are applicable to insurers, upon notice from the commissioner, as to all applications made after the effective date of the revisions. Provided, however, the commissioner may reject new requirements and forms, if after notice and hearing, the commissioner finds that they are not in the best interests of the public and that they unduly burden insurers applying for a license in this state. The Commissioner's determination shall be subject to legislative review.

Section 3 – This Act repeals all company licensing requirements and all licensing forms not contained in or required by the Uniform Certificate of Authority Application and any supplemental forms published by the NAIC in connection with it, including, but not limited to: (cite specific state law provisions to be repealed).

Section 4 – This law is effective upon enactment and applies to license applications submitted to this state after the effective date.

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